

marketability of title under the following conditions:

(1) The mortgagor is to occupy the dwelling as a principal residence (as defined in §203.18(f)(1)).

(2) The defect or potential defect in title is a direct and primary result of outstanding claims to ownership of land in the community by an American Indian tribe, band, group or Nation.

(3) Fifty or more individual owners were joined as parties defendant or were members of a defendant class before April 1, 1980 in litigation involving claims to ownership of land in the community in which the property is located by an American Indian tribe, band, group or Nation pursuant to a dispute involving the Articles of Confederation, the Trade and Intercourse Act of 1790 or any similar State or Federal law.

(4) Such ownership claims are reasonably likely to be settled by court action or otherwise.

(5) Temporary adverse economic conditions exist throughout the community as a direct and primary result of such claims.

(b) Mortgages complying with the requirements of this subpart as modified by this section shall be the obligation of the Special Risk Insurance Fund.

[49 FR 21319, May 21, 1984, as amended at 55 FR 34805, Aug. 24, 1990]

§203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act.

A mortgage covering a one- to four-family residence located on Indian land shall be eligible for insurance pursuant to section 248 of the National Housing Act (12 U.S.C. 1715z-13), notwithstanding otherwise applicable requirements related to marketability of title, if the mortgage meets the requirements of this subpart as modified by this section and is made by an Indian Tribe or on a leasehold estate, by an Indian who will occupy it as a principal residence. Mortgage insurance on cooperative shares is not authorized under this section.

(a) *Exemptions.* (1) The provisions of subparts I, J, and M of part 200, and §203.30, shall not apply to approval of mortgagors for mortgages insured

under this section if the Indian tribe to which the prospective mortgagor belongs is subject to the Indian Civil Rights Act.

(2) In the case of an Indian tribe which is not subject to the Indian Civil Rights Act, the authorities cited in paragraph (a)(1) of this section shall apply, but any preference in the tribe's approval of the sale or assumption of a lease and mortgage under this section in favor of an eligible Indian over a non-Indian shall not be considered to be a violation of subpart I, J or M.

(b) *Eviction procedures.* Before HUD will insure a mortgage on Indian land, the tribe having jurisdiction over such property must certify to the HUD Field Office that it has adopted and will enforce procedures for eviction of defaulted mortgagors where the insured mortgage has been foreclosed.

(c) *Approval of lease and mortgage.* The lease must be on a form prescribed by HUD.

The mortgage must be on a form which meets the requirements of §203.17(a)(2). Before HUD will insure any mortgage under this section, the mortgagee must demonstrate that the Bureau of Indian Affairs, U.S. Department of Interior, has approved both the lease and mortgage.

(d) *Construction advances.* The Commissioner may issue a commitment for the insurance of advances made during construction and a Direct Endorsement mortgagee may request insurance of a mortgage that will involve the insurance of advances made during construction. The Commissioner will insure advances made by the mortgagee during construction if all of the following conditions are satisfied:

(1) The mortgage shall be a first lien on the leasehold;

(2) The mortgagor and the mortgagee execute a building loan agreement, approved by the Commissioner, setting forth the terms and conditions under which advances will be made;

(3) The advances are made only as provided in the commitment or the approval by the Direct Endorsement underwriter;

(4) The principal amount of the mortgage is held by the mortgagee in an interest bearing account, trust, or escrow

for the benefit of the mortgagor, pending advancement to the mortgagor or to his or her creditors as provided in the loan agreement;

(5) The mortgage shall bear interest on the amount advanced to the mortgagor or to his or her creditors and on the amount held in an account or trust for the benefit of the mortgagor; and

(6) The Secretary had determined that no feasible financing alternative is available.

(e) *Assumption or sale of leasehold.* The form of lease must contain a provision requiring tribal consent before any assumption of an existing lease, except where title to the leasehold interest is obtained by the Secretary through foreclosure of the insured mortgage. A mortgagee other than the Secretary must obtain tribal consent before obtaining title through a foreclosure sale. Tribal consent must be obtained on any subsequent transfer from the purchaser, including the Secretary, at foreclosure sale. The lease may not be terminated by the lessor without HUD's approval while the mortgage is insured or held by the Secretary.

(f) *First lien.* The first lien requirement under this part is implemented where the mortgage is filed in the State recording system and is a first lien under that system, even though the leasehold interest securing the mortgage is located on Indian land and filed with Bureau of Indian Affairs, U.S. Department of the Interior. Any tribal government whose courts have jurisdiction to hear foreclosures must also:

(1) Enact a law satisfactory to the Commissioner providing for the satisfaction of FHA-insured and Secretary-held mortgages before other obligations (other than tribal leasehold taxes against the property assessed after the property is mortgaged) are satisfied; or

(2) Enact a law providing that State law shall determine the priority of liens against the property.

(g) *Definitions.* As used in this section and elsewhere in this part, the term:

(1) *Indian* means and individual member of any Indian tribe and that member's family.

(2) *Indian land* means trust or otherwise restricted land (i) as defined by the Secretary of the Interior, over

which an Indian tribe is recognized by the United States as having governmental jurisdiction; (ii) held in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation; or (iii) acquired by Alaska natives under the Alaska Native Claims Settlement Act or any other land acquired by Alaska natives pursuant to statute by virtue of their unique status as Alaska natives.

(3) *Indian tribe* means any Indian or Alaska native tribe, band, nation, or other organized group or community of Indians or Alaskan natives recognized as eligible for the services provided to Indians or Alaska natives by the Secretary of the Interior because of its status as such an entity, or that is an eligible recipient under chapter 67 of title 31, United States Code. For purposes of engaging in section 248 insured mortgage transactions under this section, an Indian tribe may act through its duly authorized representative.

(Approved by the Office of Management and Budget under control number 2502-0340)

[51 FR 21871, June 16, 1986, as amended at 53 FR 34282, Sept. 6, 1988; 57 FR 58347, Dec. 9, 1992; 61 FR 36264, July 9, 1996]

§ 203.43i Eligibility of mortgages on Hawaiian Home Lands insured pursuant to section 247 of the National Housing Act.

(a) *Eligibility.* A mortgage on a home-
stead lease granted by the Department of Hawaiian Home Lands covering a one- to four-family residence located on Hawaiian home lands is eligible for insurance pursuant to section 247 of the National Housing Act (12 U.S.C. 1715z-12) if the mortgagor is a native Hawaiian who will occupy it as a principal residence, and if the mortgage meets the requirements of this subpart as modified by this section. Mortgage insurance on cooperative shares under § 203.43c on homes in federally impacted areas under § 203.43e is not authorized under this section.

(b) *Exemptions from other regulations.* The provisions of subparts I, J, and M of part 200, and § 203.30, to the extent that these provisions would otherwise prohibit preferences in favor of Native Hawaiians in the leasing, sale or other